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Attorneys for RRKIDZ, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RRKIDZ, INC.,

Plaintiff,

--against--

WESTERN NEW YORK PUBLIC
BROADCASTING ASSOCIATION,

Defendant.

Case No. 16-cv-00912

**COMPLAINT FOR
DECLARATORY JUDGMENT**

JURY TRIAL DEMANDED

Plaintiff RRKIDZ, Inc. (“RRKidz”), by its undersigned attorneys, Allegaert Berger & Vogel LLP, as and for its Complaint, hereby alleges upon knowledge with respect to its own acts and status, and upon information and belief with respect to all other matters, as follows:

NATURE OF THE ACTION

1. RRKidz seeks a declaration that Western New York Public Broadcasting Association (“WNED”) had no ground to send a notice attempting to

terminate the License Agreement between the parties dated as of August 23, 2011 (the "Agreement") and that the Agreement is in full force and effect. A true and correct copy of the Agreement is attached hereto and incorporated herein as **Exhibit A**. RRRKidz further contends that WNED committed a material anticipatory breach and repudiation of the Agreement by sending the termination notice based upon untenable purported grounds yet refusing to retract it. The Agreement licenses exclusive rights to RRRKidz, including trademark rights.

THE CORRESPONDENCE

2. In a letter, dated August 7, 2015, WNED attempted to terminate the Agreement based upon an untenable interpretation of the Agreement and wholly unsubstantiated allegations of breach regarding matters long-known to, or participated in long ago by, WNED (the "WNED Termination Notice"). A true and correct copy of the WNED Termination Notice is attached hereto and incorporated herein as **Exhibit B**.

3. In a letter, dated August 12, 2015, RRRKidz pointed out both the legal and factual dishonesty of the WNED Termination Notice and demanded written retraction of repudiation from WNED of the WNED Termination Notice (the "RRKidz Retraction Demand"). A true and correct copy of the RRRKidz Retraction Demand is attached hereto and incorporated herein as **Exhibit C**.

4. WNED has not complied with the RRRKidz Retraction Demand nor otherwise assured RRRKidz of WNED's performance since the WNED Termination Notice. Accordingly, the WNED Termination Notice constitutes a material anticipatory repudiation of the Agreement.

THE PARTIES

5. RRRKidz is a Delaware corporation having its principal place of

business at 101 S. First St., Suite 204, Burbank, CA 91502. RRRKidz produces and distributes children's educational media and products enriching the lives of children throughout the world through education and literacy.

6. WNED is a New York corporation with its principal place of business at 140 Lower Terrace Street, Buffalo, New York 14202.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter under 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the parties and each of the value of the property interest at issue, the potential liability at issue, and the amount in controversy exceeds \$75,000. Moreover, pursuant to paragraph 18.d. of the Agreement:

The Parties hereby consent to the jurisdiction of the state courts in the New York County and the federal courts located in the Southern District of New York as to any matter arising out of or relating to this agreement.

8. This Court has jurisdiction over this matter under 28 USC § 1331 because this action arises under the Lanham Act (15 U.S.C. §§ 1051 *et seq.*). RRRKidz' right to relief necessarily depends on resolution of a substantial question of federal law because the WNED Termination Notice accuses RRRKidz of trademark infringement under the Lanham Act.

9. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District. Moreover, pursuant to paragraph 18.d. of the Agreement:

All actions, proceedings or litigation arising from this Agreement shall be instituted and prosecuted solely within that State.

CLAIM FOR RELIEF

(Declaratory Relief)

10. RRRKidz repeats and realleges the allegations set forth in foregoing paragraphs as if fully set forth herein.

11. A bona fide justiciable and substantial controversy has arisen and now exists between RRRKidz and WNED concerning their present and prospective respective rights and obligations.

12. RRRKidz contends that:

- (a) RRRKidz has fully performed under the Agreement;
- (b) the Agreement is not and cannot be terminated by the WNED Termination Notice or otherwise;
- (c) the WNED Termination Notice constitutes a material anticipatory breach and repudiation of the Agreement by WNED;
- (d) WNED's repudiation of the Agreement excuses further performance under the Agreement by RRRKidz;
- (e) WNED's conduct constitutes a breach of the implied covenant of good faith and fair dealing;
- (f) RRRKidz has not infringed any of WNED's trademarks; and,
- (g) RRRKidz has not committed any act of unfair competition.

13. WNED contends to the contrary as shown by the WNED Termination Notice.

14. Accordingly, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Plaintiff desires judicial determination of its rights and duties, and specifically judicial declarations that:

- (a) RRRKidz has fully performed under the Agreement;
- (b) the Agreement is not and cannot be terminated by the WNED Termination Notice or otherwise;

- (c) the WNED Termination Notice constitutes a material anticipatory breach and repudiation of the Agreement by WNED;
- (d) WNED's repudiation of the Agreement excuses further performance under the Agreement by RRRKidz; and,
- (e) WNED's conduct constitutes a breach of the implied covenant of good faith and fair dealing;
- (f) RRRKidz has not infringed any of WNED's trademarks; and,
- (g) RRRKidz has not committed any act of unfair competition.

15. Such judicial determinations are necessary and serve a useful purpose in clarifying the parties' respective rights and would finalize the controversy and offer relief from uncertainty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands entry of judgment against Defendant as follows:

- (a) Declaring RRRKidz has fully performed under the Agreement;
- (b) Declaring the Agreement is not and cannot be terminated by the WNED Termination Notice or otherwise;
- (c) Declaring the WNED Termination Notice constitutes a material anticipatory breach and repudiation of the Agreement by WNED;
- (d) Declaring WNED's repudiation of the Agreement excuses further performance under the Agreement by RRRKidz;
- (e) Declaring WNED's conduct constitutes a breach of the implied covenant of good faith and fair dealing;
- (f) Declaring RRRKidz has not infringed any of WNED's trademarks;
- (g) Declaring RRRKidz has not committed any act of unfair competition;
- (h) Awarding RRRKidz its attorneys' fees and fees and costs of suit

incurred herein pursuant to paragraph 18.e. of the Agreement and/or 15 U.S.C. § 1117; and,

(i) Awarding RRRKidz all other and further relief that the Court deems just and proper.

Respectfully submitted,

Dated: February 5, 2016
New York, New York

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 5, 2016
New York, New York

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